

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of the Connecticut Department of)	NSD File No. L-02-03
Public Utility Control For Delegated Authority)	
to Implement Transitional Service-Specific)	
and Technology-Specific Overlays)	

**COMMENTS OF
VOICESTREAM WIRELESS CORPORATION**

VoiceStream Wireless Corporation (“VoiceStream”)¹ below responds to the Commission’s invitation to comment on the Supplemental Petition that the Connecticut Department of Public Utility Control filed on May 9, 2002.²

BACKGROUND FACTS

In its December 28, 2001 *Third Report and Order*, the Commission lifted the ban on specialized overlays (“SOs”) and held that it will “allow state commissions seeking to implement

¹ VoiceStream, combined with Powertel, Inc., is the sixth largest national wireless provider in the U.S. with licenses covering approximately 96 percent of the U.S. population and currently serving over seven million customers. VoiceStream and Powertel are wholly-owned subsidiaries of Deutsche Telekom, AG and are part of its T-Mobile wireless division. Both VoiceStream and Powertel are, however, operated together and are referred to in this request as “VoiceStream.”

² See *Public Notice*, Wireline Competition Bureau Seeks Comment on the Supplemental Information to the Supplemental Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology-Specific Service Overlay, CC Docket No. 99-200, DA 02-1292 (May 31, 2002).

SOs to request delegated authority to do so on a case-by-case basis.”³ Recognizing that SOs “may not promote number efficiency” and have “potential discriminatory effect,” the Commission directed states to demonstrate that “the benefits will outweigh the costs of implementing the SO” and “why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay.”⁴ The Commission identified eight criteria that states should address, so it could determine whether its “goals are likely to be met if the SO is implemented.”⁵

Three weeks later, on January 18, 2002, the Connecticut Commission filed a Petition seeking delegated authority to implement SOs in the 203 and 860 NPAs.⁶ Many of the comments submitted in response noted that the Petition failed to adequately discuss many of the criteria that the Commission had established in the *Third Report and Order*. As VoiceStream stated:

[T]he Petition fails to demonstrate that the contemplated SO provides superior number resource optimization benefits compared to an all-service overlay, or that the SO’s purported benefits outweigh the costs to be borne in the form of discriminatory and anti-competitive operations and market practices.⁷

The Commission has since acknowledged that this Connecticut Petition is incomplete.⁸

On May 9, 2002, the Connecticut Commission filed a “Supplemental Information” in support of its January 18, 2002 Petition. As VoiceStream demonstrates below, Connecticut still

³ *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, FCC 01-362, 17 FCC Rcd 134 ¶ 67(Dec. 28, 2001), *appeal pending*, *Sprint v. FCC*, No. 02-1129 (D.C. Cir.).

⁴ *Id.* at ¶¶ 72-73 and 80-81.

⁵ *Id.* at ¶ 81.

⁶ This Connecticut Petition was actually a supplement to a petition the Connecticut Commission originally filed on March 7, 2001.

⁷ VoiceStream Comments, CC Docket No. 99-200, at 2 (Feb. 26, 2002).

⁸ *See Public Notice*, note 1 *supra*, at 2 (“The petition, however, did not address other aspects of the criteria.”).

has not demonstrated that the contemplated SO provides superior number resource optimization benefits compared to an all-service overlay, or that the SO's purported benefits outweigh the costs to be borne in the form of discriminatory and anti-competitive operations and market practices.

DISCUSSION

A. Connecticut Still Has Not Demonstrated How the Optimization Benefits of the Proposed SO Would Be Superior to an All-Services Overlay

The Commission has recognized that "SOs may not promote number efficiency," and for this reason, it has required states to demonstrate how "the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay."⁹ Connecticut did not make this demonstration in its January 2002 Petition, as numerous commenters pointed out. It still has not made this demonstration in its May 2002 Supplemental Petition.

There are no apparent optimization benefits to the Connecticut SO proposal. The purpose of number conservation is to avoid the exhaust of the North American Numbering Plan ("NANP"). This objective is achieved by not activating NPA codes held in reserve when these scarce resources would be used inefficiently – because the inefficient use of NPAs held in reserve would accelerate premature NANP exhaust.¹⁰

Connecticut has provided no facts that show that its proposed SO would be used efficiently. Indeed, one still cannot ascertain from the Supplemental Petition what services Connecticut proposes to place in the proposed SO. Connecticut states that its proposed SO "would be, for all intents and purposes, dedicated to the wireless industry," yet it later states that

⁹ *Third Report and Order* at ¶¶ 73 and 81.

“SO carriers will have the opportunity to pool numbering resources in the underlying NPAs just as they would if the Connecticut SO was not implemented.”¹¹ Since wireless carriers will be pooling capable in five months, before any SO would possibly be implemented, it is unclear what wireless carriers, if any, would use the SO. Connecticut further proposes to include certain “non-geographic sensitive based services” in the SO, but it does not plan on identifying these services until it conducts a workshop at some future date.¹² Without knowing the specific services proposed for inclusion in the SO, and the numbering demands of these services, the Commission cannot possibly determine whether the proposed SO would efficiently use the eight million numbers that are made available with a new NPA code.

Imperatives with respect to the conservation of NPA codes should impel the Commission to make a careful assessment before assigning any of the limited number of NPA codes held in reserve. Authorizing state commissions to establish SOs without any demonstration that the eight million new numbers will be used efficiently could easily become the single greatest cause of NANP exhaust – this at a time when net NXX code assignment rates are beginning to fall, and in some cases, even beginning to go negative.

B. Connecticut Still Has Not Demonstrated How the Benefits of a SO Would Exceed the Costs

The Commission has specified that states seeking to implement a SO “must also demonstrate that the benefits will outweigh the costs of implementing the SO.”¹³ Connecticut has not begun to meet this burden.

¹⁰ See *Numbering Resource Optimization Notice of Proposed Rulemaking*, 14 FCC Rcd 10322, 10423 ¶ 241 (1999) (“[R]educ[ing] the need to introduce new area codes . . . can help prevent premature exhaust of the NANP.”).

¹¹ Compare Supplemental Petition at 2 with 5.

¹² See *id.* at 3-4.

¹³ *Third Report and Order* at ¶ 80.

The Commission has noted that SOs can have “significant costs”:

In the *Ameritech Order* and the *Local Competition Second Report and Order*, we recognized that Ameritech’s proposed technology-specific overlay placed wireless and paging providers at a competitive disadvantage.¹⁴

Yet, neither Connecticut’s original petition nor its more recent supplement addresses the costs of the proposed SO, including the costs such an area code would impose on the over one million mobile customers in Connecticut.¹⁵

The benefits of the proposed SO are also not apparent. Connecticut states that an SO would delay the exhaust of the current NPAs.¹⁶ While this statement is accurate, Connecticut does not demonstrate how the public would benefit by such a delay – that is, would benefit by a SO as opposed to an all-services overlay. Existing customers in Connecticut would not be required to change their current telephone numbers in either case, whether the form of relief is a SO or an all-services overlay.

Some states have been reluctant to use NPA overlays as a NPA relief method because of the need to implement 10-digit dialing for all local calls. Some of these states appear attracted to SOs because they believe it would preserve seven-digit dialing for wireline customers. Importantly, Connecticut is not in this category. The conversion from seven-digit to 10-digit dialing for local calls does not appear to be a factor in the Connecticut SO proposal. The Connecticut Commission has acknowledged that “10-digit dialing is currently in effect for 45%

¹⁴ *Id.* at ¶ 78.

¹⁵ According to the Commission’s most recent data, Connecticut had 1,277,123 mobile customers in December 2000. *See* Industry Analysis Division, *Trends in Telephone Service*, at 12-3, Table 12.1 (Aug. 2001).

¹⁶ *See* Connecticut Supplement at 2. Connecticut further states that “the public has demanded that such an [SO] code . . . be established in Connecticut.” *Id.* at 1. But as Sprint points out, the Connecticut Commission has not demonstrated that the public “demands” a SO or, more fundamentally, that public opinion should be given determinative weight in the development of numbering policy. *See* Sprint Ex Parte, CC Docket No. 99-200, at 2 (May 21, 2002).

of local calls in Connecticut.”¹⁷ And in its Supplement, Connecticut states that it is “prepared to require [10-digit dialing] implementation on a statewide basis” after the conduct of an appropriate customer education program.¹⁸

Nonetheless, VoiceStream cannot discern from Connecticut’s supplement any advantage of a SO over an all-services overlay. VoiceStream submits that given the significant costs associated with a SO, coupled with the absence of any demonstrated benefits from a SO, the Commission cannot conclude based on the existing record that the benefits of the proposed SO would exceed the costs of the SO.

C. A Wireless SO Is Not Workable with Wireless LNP

Wireless carriers are currently required to become capable of supporting Local Number Portability (“LNP”) in five months, on November 24, 2002. With wireless LNP, a LEC customer would be able to switch their number to a wireless carrier, and a wireless customer could switch their number to a LEC’s service. Thus, once wireless carriers become LNP capable, it will be no longer possible for regulators to segregate LEC and mobile customers into different area codes. Simply put, technology/service-specific overlays based on the fixed/mobile distinction are no longer workable as a practical matter once wireless LNP is implemented.

Certainly, wireless carriers have asked the Commission to delay the commencement of this LNP regulatory mandate, in large part so they can focus their implementation efforts on becoming pooling compatible. But whether wireless LNP is implemented in November 2002, or later does not change the fact that wireless SOs become obsolete and unworkable once wireless LNP is activated.

¹⁷ Connecticut Petition at 8 (Jan. 18, 2002).

CONCLUSION

The Connecticut Commission should be applauded for the steps it has taken to improve number utilization within that state. It has implemented a successful reclamation program and it has adopted number pooling in advance of the national pooling program. However, with respect to its SO proposal, Connecticut has not begun to meet the minimal requirements that the Commission established in its *Third Report and Order*, including the fundamental showing that the proposed SO would be superior to an all-services overlay in terms of number optimization. The Commission must therefore deny the request.

Respectfully submitted,

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¹⁸ Supplemental Petition at 6-7. VoiceStream agrees with Sprint that the 12-month waiver of the mandatory 10-digit dialing rule that Connecticut seeks is unnecessarily long, and ignores that customer education can occur before any overlay is activated. *See* Sprint Ex Parte, CC Docket No. 99-200, at 5-6 (May 21, 2002).